The Commission's analysis of the extent of competition between wireless and wireline services conducted in connection with the AT&T/BellSouth merger supports including wireless services in the forbearance analysis. In the ***AT&T/BellSouth Merger Order,*** the Commission recognized that "growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service instead of wireline local services"; that "approximately ***6*** percent of households have chosen to rely upon mobile wireless services for all of their communications needs"; that certain wireless carriers such as Sprint Nextel "would likely take actions that would increase intermodal competition between wireline and mobile wireless services"; and that "intermodal competition between mobile wireless and wireline service will likely increase in the near term."[29] The Commission also recognized that "even if most segments of the mass market are unlikely to rely upon mobile wireless services instead of wireline local services today," in order for wireless service to constrain prices for wireline service the analysis "only requires that there be evidence of sufficient substitution for significant segments of the mass market."" The Commission accordingly concluded that "mobile wireless services should be included within the product market for local services to the extent that customers rely on mobile wireless service as a complete substitute for . . . wireline service.""

Significantly, the Commission's conclusions with respect to wireless were not confined or unique to any particular geographic market but instead applied generally to all relevant geographic markets. The Commission also recognized that it was not necessary to evaluate competition on a granular geographic basis and that a state-level analysis was reasonable.[32]

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[29] ***AT&T/BellSouth Merger Order*** ¶ 96.

[30] ***Id.***

[31] *Id.*

[32] ***See id.*** ¶ 104.

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Although the Commission reached these conclusions in the context of analyzing a merger, the purpose of that analysis -- determining the extent of mass market competition -- is identical to the one here, and the Commission's conclusions should therefore hold the same weight here as they did in that context.

Evidence shows that, particularly in the Seattle MSA, wireless service is another form of facilities-based competition. Wireless service both taken alone, and particularly in combination with other forms of facilities-based competition, is sufficient to ensure that market forces will protect the interests of consumers. Data indicate that customers would have a viable alternative should Qwest attempt to raise its wireline prices. Moreover, Qwest's extremely limited presence as a wireless service provider in the Seattle MSA, strongly suggests that if the price of wireline service went up, few of Qwest's customers would switch to a Qwest wireless service.[33] Wireless competition accordingly protects against wireline price increases in the first instance.

4. Over-the-Top VoIP Providers

Industry experts forecast exponential VoIP growth until at least 2010. For example, Frost and Sullivan found that VoIP market revenue totaled $295.1 million in 2004 and expect it to reach $4,076.7 million in 2010, **a growth rate of over 1,200%**. **See** Brigham and Teitzel Declaration, Exhibit 6, p.25. Additionally, the Yankee Group reported that roughly 44% of all U.S. households now subscribe to broadband Internet access. This percentage is expected to reach 58% by 2010. *Id.* ¶ 50.

Since VoIP calls do not rely on Qwest's switched network (and calls transported via non-Qwest broadband facilities do not rely on Qwest's local loop network), the rapid customer adoption of VoIP represents an additional form of competition that bypasses Qwest. These

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[33] **See *Sunset Order*** ¶ 34. Qwest Wireless has [redacted] share of the consumer wireless market in the Seattle MSA. Brigham and Teitzel Declaration n.17.

competitive networks are not limited to competitive wireline broadband services, but also include cable and wireless services. According to the Commission, broadband access lines in Washington have grown at an astounding rate, from 195,628 in December 2000 to 1,575,375 in June 2006, an increase of over 705%. Brigham and Teitzel Declaration ¶ 47. In fact, in the first six months of 2006 alone, broadband Internet access lines in Washington increased by over 29%. ***Id.*** **As** of June 2006, over 46% of the broadband access lines in Washington were served by cable modem, 32% were served by DSL and the remainder were served by other technologies such as fiber and fixed wireless. *Id.* The Commission found that "99% of the country's population lives in the 99% of zip codes where a provider reports having at least one high-speed service subscriber," ***(id.)*** and every zip code in Washington has at least one broadband service provider available as of June 2006. *Id.* Competitive broadband services are now widely available from multiple providers in the Seattle MSA, and have been embraced by a rapidly increasing number of customers. Each broadband customer represents a potential VoIP subscriber.

The non-Qwest broadband facilities capable of carrying VoIP calls include wireless broadband ("WiFi") service, which is being actively deployed in many communities within Qwest's service territory in the Seattle MSA. WiFi is available in over 140 public locations within the Seattle MSA. ***See*** Brigham and Teitzel Declaration ¶ 43.[34] Consumers can utilize the WiFi connection in any WiFi "hotspot" to access the Internet and use VoIP services to make and receive telephone calls without reliance on Qwest's local network. *Id.* Clearwire Corporation also provides wireless broadband connectivity at speeds up to **1.5** Mbps (which can easily accommodate VoIP service) throughout virtually the entire MSA. Additionally, Clearwire offers

[34] ***See*** Brigham and Teitzel Declaration Exhibit 5, p.9.

its own VoIP telephone service to Clearwire wireless broadband subscribers in area code 206, which encompasses the Seattle MSA. Clearwire's VoIP service is priced at $29.99 per month, which includes unlimited long distance calling. *Id.* ¶ 49.

The Commission has previously acknowledged that some portion of mass market consumers view certain over-the-top VoIP services as substitutes for wireline local service.[35] Currently there are at least 60 VoIP providers (excluding Qwest) serving the Seattle **MSA** including Vonage, Packet8, Skype, SunRocket and others. Many of these providers (including Vonage and Packet8) offer service options for both residential and business markets. Brigham and Teitzel Declaration ¶ 48. Other providers such as Speakeasy and SunRocket, focus primarily on the residential market. *Id.* Since VoIP calls do not rely on Qwest's switched network (and calls transported via non-Qwest broadband facilities do not rely on Qwest's local loop network), the rapid customer adoption of VoIP represents an additional form of competition that bypasses Qwest. Thus, VoIP should be included in the forbearance analysis because it too constrains Qwest's ability to raise its prices or otherwise harm consumers.

5. Qwest Wholesale Alternatives

In the ***Omaha Forbearance Order,*** the Commission also relied in part on competitors' ability to use the ILEC's wholesale offerings pursuant to "provisions of the Act designed to develop and preserve competitive local markets."[36] The Commission recognized that where there are "very high levels of retail competition that do not rely on the Qwest facilities -- and for which Qwest receives little to no revenue" Qwest has "the incentive to make attractive wholesale

[35] ***AT&T/BellSouth Merger Order*** ¶ 94.

[36] ***Omaha Forbearance Order,*** 20 FCC Rcd at 19447 ¶ 64; ***see id.*** at 19433 ¶ 37.

offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than Qwest."[37]

As demonstrated above, there is extensive facilities-based retail competition in the Seattle MSA. Qwest has in fact made attractive wholesale offerings available even when it has no obligation to do so. Following the Commission's decision to eliminate the UNE platform, Qwest began offering its QPP/QLSP service, which provides the same features and functionality as the UNE platform, but at negotiated, market rates. **As** of December 2006, [redacted] competitors in the Seattle **MSA** were serving approximately [redacted] voice grade equivalent ("VGE") residential lines using this wholesale product. Brigham and Teitzel Declaration ¶ 23 and Highly Confidential Exhibit 2. **As** of that same date, [redacted] competitors were reselling approximately [redacted] VGE residential lines in the Seattle MSA pursuant to the resale provisions of Section 251(c)(4). *Id.*

6. Decline in Qwest's Retail Lines

In the *Omaha Forbearance Order,* the Commission held that the proper focus should be on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. The Commission will look at both "actual and potential competition" that "either is present, or readily could be present."[38] This focus on the availability of actual and potential competitive alternatives rather than static market share is consistent with the approach the Commission has taken in other contexts. The Commission has long held that "an analysis of the level of competition for LEC services based solely on a LEC's

[37] *Id* at 19448-49 ¶ 67.

[38] *Id.* at 19446 ¶ 62.

market share at a given *point in time* would be *too static and* one-dimensional."[39] "*[T]he* presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares."[40]

As demonstrated above, there are multiple competitive alternatives that are widely available in the Seattle **MSA** and that also are being used by mass market consumers. This fact is further confirmed by the declines that Qwest has experienced in its base of switched access lines. Between 2000 and 2006 Qwest's residential switched access lines have declined by approximately [redacted] percent, from [redacted] to [redacted] even though the number of households in the Seattle **MSA** increased by approximately seven percent during the period from 2000 to 2005. *See* Brigham and Teitzel Declaration ¶ 5. Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing given "the widespread availability of cable telephony and its associated multi-service bundles."[41]

Since Qwest's wireline, VoIP, and cable telephony competitors are under no obligation to report customer in-service data, especially at the MSA level, precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications

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[39] *In the Matter of Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions io Price Cup Rules for AT&T,* Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858,922-23 ¶ 143 (1995).

[40] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 19 FCC Rcd 21522,21579 ¶ 148 (2004).

[41] *Regulatory Event Risk Headlines Fitch's U.S. Telecorn Outlook for 2007,* November 29,2006. *See* Brigham and Teitzel Declaration Exhibit 1, p.46.

dynamics. For example, TNS Telecoms, an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends.[42] Brigham and Teitzel Declaration ¶ *6.* In fourth Quarter 2000, TNS reported Qwest's share of residential communications connections in the Seattle MSA at [redacted]. ***Id.*** By the fourth Quarter 2006, Qwest's share of residential communications connections in the Seattle **MSA** had declined to [redacted]. *Id.* These data confirm that Seattle-area consumers are utilizing substitutes for Qwest's service to satisfy their telecommunications needs.

In the ***Sunset Order,*** the Commission noted that the availability of wireless and VoIP constrains Qwest's market power given the large and growing percentage of customers who subscribe to both wireline service and wireless and/or broadband Internet access, and who thus have the ability to shift usage in response to price changes.[43] Although the Commission reached these conclusions in the context of analyzing the market for long distance services, the conclusions are applicable here because consumers have access to a similar multiplicity of platforms. Moreover, for those services such as wireless and over-the-top VoIP, where

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[42] In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections'' (excluding video connections) for each service provider in the consumer telecommunications market. In calculating "connections shares," TNS defines a "connection" as any telecommunications service used by the customer. **A** residential access line, a wireless service and a broadband Internet line used by a customer would each be counted as a discrete "connection" under TNS' definition in its calculations of "connections shares." For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections," and Qwest's "connections share" in this example would be 66%. Brigham and Teitzel Declaration ¶ 6.

[43] ***See Sunset Order*** ¶¶ 34, 37 and 38.

consumers pay an "all you can eat" price, once consumers have purchased these services for use with long distance services, there is no incremental cost for local use.

In sum, Qwest faces many substitutes for its wireline services. Increasing numbers of customers subscribe to competitive wireline and cable services.[44] Additionally, increases in subscriptions to broadband Internet access services allow customers to subscribe to over-the-top VoIP service.[45] Moreover, there have been increased subscriptions to mobile wireless services, accompanied by a migration of wireline minutes to mobile wireless minutes.[46] All of these trends indicate that consumers are increasingly finding these alternative services serve as substitutes for Qwest's traditional wireline service offerings.[47] Thus, in the mass market, enforcement of unbundling is not necessary to ensure that charges are just and reasonable. and not unjustly discriminatory, nor is unbundling necessary for consumer protection. Similarly, dominant carrier tariff regulation is no longer necessary to ensure that charges are just and reasonable, nor for consumer protection

B. Enterprise Customers Also Have Access to a Wide Range of Competitive Alternatives

The provision of services to enterprise customers is also highly competitive. Moreover, the customers themselves are highly sophisticated purchasers of communications services.[48] They tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.[49] Accordingly, the

[44] ***See*** above at Sections II.A.l. and **II.A.2.;*see*** *also* Brigham and Teitzel Declaration ¶¶ 8-9.

[45] ***See*** above at Section II.A.4.; ***see*** *also* Brigham and Teitzel Declaration ¶ 47.

[46] ***See*** above at Section II.A.3.; ***see*** *also* Brigham and Teitzel Declaration ¶¶ 39-41.

[47] ***See Sunset Order*** ¶ 38.

[48] ***See id.*** ¶ 46; *AT&T/BellSouth* ***Merger Order*** ¶ 82.

[49] ***See Sunset Order*** ¶ 46.

Commission has previously expressed its expectation that enterprise *customers are* **aware** of *the* multitude of choices available to them,[50] and are able to take advantage of the competitive choices available to them, seeking out the best-priced alternatives." In the *Omaha Forbearance Order,* the Commission decided to forbear from loop and transport unbundling based on competition from Cox, the incumbent cable operator, together with "maps and other evidence" that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully." As in the mass market, evidence demonstrates that "the level of facilities-based competition [in the Seattle MSA] ensures that market forces will protect the interests of consumers."[53] As the Commission has previously found, numerous categories of competitors provide services to enterprise customers.[54] These include cable companies, wireless providers, CLECs, data/IP network providers, VoIP providers, system integrators, and equipment vendors.[55]

1. Cable

Comcast's and Millennium's cable networks in the Seattle **MSA** are capable of -- and are -- being used to serve enterprise customers. In the *Omaha Forbearance Order,* the Commission found that **Cox's** cable facilities were "capable of delivering both mass market and enterprise telecommunications services."[56] The Commission relied on the fact that Cox had "strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its

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[50] *See id.*

[51] *AT&T/BellSouth Merger Order* ¶ 82.

[52] *Omaha Forbearance Order, 20* FCC Rcd at 19448 ¶ *66; see id* at 19448-49 ¶ **67**

[53] *Id.* at 19416 ¶ 1.

[54] *Sunset Order* ¶ *30.*

[55] *See id.; AT&T/BellSouth Merger Order* ¶ *70.*

[56] *Omaha Forbearance Order, 20* FCC Rcd at 19448 ¶ ***66.***

technical expertise, its economies of scale and scope, its sunk investments innetwork infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market."" The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers, as compared to mass-market, because the "revenue potential" is greater.[58] The Commission concluded that, in light of these facts, "Cox poses a substantial competitive threat . . . for higher revenue enterprise services."[59] In reaching this conclusion, the Commission found the fact that Cox's existing network did not necessarily reach every individual business location as "not. . . dispositive" in light of the other evidence demonstrating Cox's incentives and ability to serve these customers.[60]

This same analysis applies with equal force here. As demonstrated above, Comcast, in particular, has had "strong success in the mass market" in the Seattle MSA. Moreover, it has an extensive network and therefore possesses "the necessary facilities to provide enterprise services.'' Comcast has recently announced a focus on serving the business market, positioning itself as a direct substitute for such services offered by Qwest. Brigham and Teitzel Declaration ¶ 20.

2. Wireline CLECs

Second, a large number of other competitors provide extensive business retail competition in the Seattle **MSA. As** stated above, CLECs are utilizing Qwest resale or QPP/QLSP wholesale services to compete with Qwest in every wire center in the Seattle MSA. Brigham and Teitzel Declaration, Highly Confidential Exhibit 2. Qwest estimates that CLECs

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[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.* ¶ 66 n.174.

competing through QPP/QLSP and Resale are providing approximately [redacted] business lines. *Id.* This does not take into account any CLECs competing via Special Access services or CLEC-owned switches and loops.

As explained above regarding mass market services, to the extent CLECs are utilizing their own networks to serve enterprise customers in the Seattle MSA, Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, of CLECs that are "facilities-based" (those utilizing CLEC-owned switches and loops and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 36% of its business lines[61] are listed in the white pages directories. *Id.* n.48. Based upon white pages listings data as of January 2007, and presuming facilities-based CLECs' customers choose to list their telephone numbers in the white pages directory in the same proportions as Qwest's customers, there were approximately [redacted] business lines associated with facilities-based CLECs in the rate centers in the Seattle **MSA.** *Id.* ¶ 25.

In the *Omaha Forbearance Order,* the Commission also considered "evidence that a number of carriers . . . had success competing for enterprise services using DSI and DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition.[62] The Commission held that "this competition that relies on Qwest's wholesale inputs -- which must be priced at just, reasonable and nondiscriminatory rates . . . supports our

[61] In particular, business customers often elect to list only their primary telephone number in the white pages directory. To the extent customers of facilities-based CLECs do not request that their telephone numbers be reported to Qwest for input to the white pages database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all. Brigham and Teitzel Declaration n.48.

[62] *Omaha Forbearance Order, 20* FCC Rcd at 19449-50 ¶ 68.

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conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1)."[63]

As in Omaha, competitors in the Seattle MSA are competing extensively using Special Access obtained from Qwest. As of December 2006, competitors purchased over [redacted] Special Access channels from Qwest in the Seattle MSA. Brigham and Teitzel Declaration ¶ 35. The number of VGE circuits being provided by competitors using Qwest Special Access services exceeds the number of VGE circuits being provided by CLECs using UNEs, QPP/QLSP, and resale combined. ***Id.*** Over [redacted] of the Special Access VGEs in the Seattle MSA are in wire centers that also have competitive fiber in place. *Id.* ¶ 36.

There are numerous CLECs competing with Qwest for enterprise business customers in the Seattle MSA. As is well known in the industry, Verizon closed its acquisition of MCI in January 2006. MCI has offered a broad range of services to residential and business customers in the Seattle MSA. Verizon continues to offer voice and data services to virtually every business market segment in the Seattle MSA. ***Id.*** ¶ 31. AboveNetMFN, which provides telecommunications services to enterprise end users on a retail basis, and to other carriers on a wholesale basis, owns over [redacted] miles of fiber in the Seattle MSA, according to GeoTel. ***Id.*** ¶ 33. AboveNet's fiber map clearly shows that its extensive fiber ring in the Seattle MSA intersects major business centers where high concentrations of businesses and carriers are located. ***Id.***

3. System Integrators, IP-Enabled Service Providers and Other Competitors

[63] ***Id.*** (Footnote omitted.) The forbearance that Qwest seeks here will not eliminate Qwest's obligations under Sections 201 and 202 to provide its services on just and reasonable, nondiscriminatory terms.

Third, as the Commission recently acknowledged in the context of the *AT&T/BellSouth Merger Order,* "systems integrators and the use of emerging technologies, including various Internet Protocol (IP-enabled) technologies, are likely to make [the enterprise] market more competitive, and this trend is likely to continue in the future."[64] Demand for systems integrators is driven by the need for the extensive planning and management necessary to create communications systems blending voice, data, video, Internet, and wireless applications. Brigham and Teitzel Declaration ¶ 60. In the enterprise market, nearly half of all medium and large enterprises use some form of managed telecommunications and IT services. ***Id.*** The North American managed telecom service market generated $18.6 billion in revenues in 2006. ***Id.*** n.149. Equipment vendors and systems integrators such as IBM, New Edge Networks, Mammoth Networks, and others compete in the Seattle MSA. ***Id.*** ¶ 61. For example, New Edge provides managed telecommunications services to small businesses, large corporations and to telecom carriers. ***Id.*** IBM helps customers "design, deploy and manage an IP telephony infrastructure that can help reduce the costs associated with managing and maintaining separate voice, data and equipment networks." ***Id.*** Mammoth Networks provides DSL, Frame Relay and ATM service aggregation, allowing customers to connect circuits to its network. ***Id***

The increasing role of system integrators in the enterprise market may be based in part on the fact that VoIP providers are also making competitive inroads into the enterprise market. In 2005, 36% of large and 23% of medium North American organizations interviewed by a major research firm were already using VoIP products and services. That research firm estimated that by 2010, almost half of small and two-thirds of large organizations in North America would be using VoIP products and services. ***Id.*** ¶ 50.

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[64] ***See AT&T/BellSouth Merger Order*** ¶ 81.

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The Seattle area is a hotbed ofinnovation. As *but* one example, business in Seattle can also purchase a hybrid wireless service offered by Sotto Wireless, integrating cellular, WiFi and VoIP technologies. This service sends calls over the Internet using a wireless LAN, when the end user is in the office, and uses the cellular network when the end user is away from the office. The phone supports both voice and data communications. *Id.* ¶ 44.

4. Competitive Fiber

Finally, there are extensive competitive fiber networks in the Seattle MSA. According to GeoTel, a leading provider of telecommunications facilities information, approximately [redacted] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) are now in place in the Seattle MSA, and this fiber is typically used by Qwest's competitors to serve enterprise and wholesale customers. *Id.* ¶ 37. At least one fiber-based competitor has facilities in [redacted] of Qwest's wire centers in the Seattle MSA, and these wire centers contain [redacted] of Qwest's residential lines and [redacted] of Qwest's retail business lines in the MSA. *Id.* In addition, competitive fiber is now being used to serve over [redacted] buildings in the Seattle MSA. ***Id.***

Carriers with significant fiber facilities in the Seattle MSA include [redacted]. *Id.* ¶ 38. Confidential Exhibit 4 shows the known fiber routes for 20 entities with competitive fiber facilities in the Seattle **MSA.** Given these significant facilities-based competitors, which can provide retail or wholesale services, it is clear that Qwest faces competition in its efforts to reap more revenue "indirectly from retail customers who choose a retail provider other than Qwest."[65]

[65] ***Omaha Forbearance Order,*** 20 FCC Rcd ¶ 67

5. Decline in Qwest's Retail Lines

Given the competition from Comcast, Millennium, wireline CLECs, systems integrators, VoIP providers, entities with competitive fiber networks and other players it is not surprising that Qwest has lost a significant proportion, [redacted], of its retail business lines between December 2000 and December 2006. Brigham and Teitzel Declaration ¶ 5. Qwest had [redacted] business retail access lines in December 2000, and just [redacted] in December 2006. *Id.* Just as in the mass market, developing precise measurements of "share" in the business market is difficult, given the diverse scope of intramodal and intermodal competition that now exists in the Seattle MSA and the general lack of publicly-available customer in-service data for these competitors. However, TNS Telecoms conducts primary research in the small business and enterprise business segments and has assembled "revenue share" estimates for those markets as indicators of competitive trends. In stratifying the business market, TNS classifies businesses generating less than $1,500 in monthly telecom spending as small business customers, and business customers spending at or above this level as "enterprise" business customers. *Id* ¶ 7. In the small business category, TNS' research shows that Qwest's revenue share in the Seattle MSA was [redacted] in fourth Quarter 2006. *Id* In the enterprise market, Qwest's revenue share in the Seattle MSA was [redacted] in fourth Quarter 2006. *Id.* These data confirm that Seattle MSA businesses are utilizing substitutes for Qwest's service to satisfy their communications needs, particularly at the high end of the market. Systems integrators and the increased use of IP-enabled technologies are likely to make this market more competitive in the future.

III. THE THIRD PART OF THE FORBEARANCE TEST IS SATISFIED BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST

As the Commission found in the *Omaha* Forbearance Order, evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test is met, *i.e.* it is in the public interest to eliminate the regulations in question.[66] In the *Omaha Forbearance Order* the Commission also identified two additional reasons why forbearance from the regulations at issue was in the public interest. Both reasons apply with equal force in the Seattle MSA.

First, as the Commission found in Omaha, the costs of the unbundling obligations that Qwest faces in the Seattle MSA outweigh the benefits. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive unbundling. **As** the Commission has explained, "excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[67] Similarly the D.C. Circuit has recognized that mandated unbundling "imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities."[68] Given the extensive facilities-based competition that already exists in the Seattle MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while the costs of such regulatory intervention are significant.[69] Forbearance will give Qwest, and other facilities-based competitors, greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

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[66] *See Omaha Forbearance Order,* 20 FCC Rcd at 19437 ¶ 47, 19453 ¶ 75.

[67] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16984 ¶ 3 (2003) (subsequent history omitted).

[68] *United States Telecom Ass'n v. FCC,* 290 F.3d 415, 427 (D.C. Cir. 2002).

[69] *See Omaha Forbearance Order,* 20 FCC Rcd at 19454 ¶ 77.

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Eliminating unbundling regulation will also "further the public interest by increasing regulatory parity" among telecommunications providers in the Seattle MSA. These regulations were imposed at a time when Qwest's narrowband circuit-switched network was a dominant technology, but this is far from the case today. Qwest is now losing mass market and enterprise lines and customers to wireless and broadband competitors. As the Commission noted, it is "in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms."[70] In the face of such competition, asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers.[71]

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public interest where vigorous local competition has emerged.[72] As demonstrated above, cable voice services in the Seattle MSA are more widely available than they were in Omaha, and other types of competition are even more widespread than they were in December 2005 when the Commission issued the *Omaha Forbearance Order.* Moreover, with respect to interstate switched access services, competitive wireless services are particularly significant because customers can use their wireless phones for long-distance calls even where they do not abandon their wireline phone entirely. In fact, large fractions of long distance calls and minutes have already migrated to wireless. Brigham and Teitzel Declaration ¶ 40.

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[70] *Id.* at 19454-55 ¶ 78.

[71] *See, e.g., In the Mutters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14878 ¶ 45, 14890-91 ¶ 71, 14895-96 ¶ 79 and n.241 (2005), *appeal pending* ***sub*** *nom. Time Warner Telecom v. FCC,* No. 05-4769 (and cons. cases) (3rd Cir.), *oral argument held,* Mar. 16, 2007.

[12] *See Omaha Forbearance Order,* 20 FCC Rcd at 19437 ¶ 47.

As the Commission found in Omaha, eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating **the** unnecessary costs such regulations impose. In particular, "[i]n these environments that are competitive for end users, applying these dominant carrier regulations to Qwest limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages."[73]

The Commission has similarly recognized in other contexts that certain "regulations associated with dominant carrier classification can also hwe undesirable effects on competition."[74] For example, the Commission has recognized that tariffing requirements "impose significant administrative burdens on the Commission and **the** BOC[s]," and "adversely affect competition."[75] Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Likewise, the Commission's price cap regulations limit Qwest's ability to respond to market conditions and competition. Unlike other providers in the Seattle **MSA,** to whom price cap regulation does not apply, Qwest is restricted from responding to competition with deaveraged rates and cannot respond to competitors' bundled service offerings. Competitors also can use these regulations to their advantage, both to undercut each others' pricing or to maintain artificially high prices.

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[73] ***Id.***

[74] *In **the Matter of Regulatory Treatment of** LEC **Provision of Interexchange Services Originating** in **the** LEC's **Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace,*** Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15808 ¶ 90 (1997) ("*LEC Classification **Order"),** on **recon.,*** 12 FCC Rcd 8730 (1997), ***Order,*** 13 FCC Rcd 6427 (1998), *on **further recon.,*** 14 FCC Rcd 10771 (1999); ***see** also **Sunset Order*** ¶ 78.

[75] ***LEC Classification Order,*** 12 FCC Rcd at 15807 ¶ **89.**

For these reasons, dominant carrier regulation of the switched.access market is not only unnecessary to ensure just, reasonable. and not unjustly or unreasonably discriminatory rates, and to protect consumers, but it also impedes Qwest's ability to compete,[76] dampens competition," and is thus harmful to the public interest.

IV. CONCLUSION

For the foregoing reasons. Qwest requests that in the Seattle MSA the Commission forbear from loop and transport unbundling regulation, dominant carrier regulation, price cap regulation of switched access services and CEI/ONA requirements.

Respectfully submitted,

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April 27, 2007

[76] *See Sunset Order* ¶ 78.

[77] **See** *id.*

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Qwest Corporation for	)	
Forbearance Pursuant to	)	WC Docket No._________
47 U.S.C. § 160(c) in the	)	
Seattle Metropolitan Statistical Area	)	

DECLARATION OF ROBERT H. BRIGHAM AND DAVID L. TEITZEL REGARDING THE STATUS OF TELECOMMUNICATIONS COMPETITION IN THE SEATTLE, WASHINGTON METROPOLITAN STATISTICAL AREA

I. INTRODUCTION AND SUMMARY.

1. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado 80202, and I am currently employed by Qwest Service Corporation ("QSC")[1] as a Staff Director in the Public Policy department. In my current position, I develop and present Qwest's advocacy before regulatory bodies concerning pricing, competition and regulatory issues. I have been employed by Qwest and its predecessor companies for over 30 years, holding various management positions in Marketing, Costs and Economic Analysis, Finance and Public Policy. I have testified before numerous state commissions in the Qwest region.

[1] QSC performs **support** functions, such as regulatory **support,** for other Qwest entities.

2. My name is David L. Teitzel. My business address is Room 3214, 1600 7" Ave., Seattle, **WA** 98191. My title is Staff Director and I am a member of QSC's Public Policy organization. In that position I develop and present company advocacy in matters relating to the manner in which Qwest Corporation ("Qwest") is regulated for retail services. **These** matters include regulatory reform in dockets before state Commissions and the FCC. I have been employed by Qwest and its predecessor companies for over 32 years and have held a number of management positions in various departments, including Regulatory Affairs, Network and Marketing.

3. The purpose of this declaration is to demonstrate that extensive competition exists for Qwest's mass market and enterprise telecommunications services in the Seattle Metropolitan Statistical Area ("MSA) from a wide variety of intramodal and intermodal competitors. Consistent with the analytical framework the Commission applied to Qwest's earlier request for forbearance with respect to the Omaha **MSA,** the facts and evidence contained herein show that these competitors are competing with Qwest in the Seattle MSA via a full range of telecommunications service platforms. Many of Qwest's competitors compete for customers by building their own facilities or utilizing other non-Qwest facilities (including competitive fiber networks, coaxial cable networks, wireless services, internet-based services, etc.). Competitors also compete via the purchase of wholesale services from Qwest; including the purchase of unbundled network elements,

Qwest Platform Plus ("QPP"),[2] Special Access, and retail services sold at a resale discount.

4. Our declaration and associated exhibits contain information obtained from publicly-available sources and internal Qwest databases, and the sources of data upon which we rely in this declaration are fully identified. We attest that all Qwest data in this declaration is accurate as of the filing date of Qwest's petition in this proceeding and that any information obtained from non-Qwest sources is shown precisely as it is reported by the source. A summary of the competitive information in our declaration is set forth below.

5. As of 2005, U.S. Census data shows that there were approximately 793,000 households and 2.5 million people in the Seattle MSA,[3] up from 742,000 and 2.3 million respectively in 2000.[4] Clearly, the Seattle MSA is experiencing a steady growth trend, with households up 7% and population up 9% over this timeframe, and it can be assumed that demand for telecommunications services in the Seattle area has increased apace. However, Qwest's retail access line base has fallen sharply in the Seattle MSA since 2000, contrary to the upward trends in housing and population, as residential and business customers have availed themselves of the ever-expanding array of competitive

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[2] In January 2007, CLECs began converting their QPP-based services to the new Qwest Local Services Platform ("QLSP") wholesale service as discussed later in this declaration.

[3] The Seattle MSA is entirely within King County.

[4] http://www.census.gov/popest/housing/HU-EST2005-CO.html; http://www.census.gov/population/www/estimates/Estimates%20pages_final.html. (Table 1).

alternatives to Qwest's services. As shown in Table 1 below, Qwest's retail residential, business and public coin access line base in the Seattle **MSA** has declined dramatically since 2000:[5]

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Table 1

Qwest Retail Access Lines in the Seattle MSA

Retail Service	Dec. 2000	Dec. 2006	Difference	% Difference
Residential	[redacted]	[redacted]	[redacted]	[redacted]
Business	[redacted]	[redacted]	[redacted]	[redacted]
Public	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]	[redacted]

______________________________end confidential---------------------------------------

These access line trends are clearly being driven by the proliferation of intramodal and intermodal competitive alternatives to Qwest's services in the Seattle MSA, and the range of alternatives continues to expand, as we discuss in our declaration.

6. The mix of competitive alternatives in the Seattle MSA continues to evolve, with traditional competitors such as CLECs continuing to aggressively compete with Qwest and intermodal forms of competition such as wireless and Voice over Internet Protocol

[5] **These results exclude** any **access line losses occurring prior** to **December 2000 and therefore understate** the **extent** of **competitive losses in the Seattle MSA.**

("VoIP")[6] rapidly gaining significant portions of the communications market. It is noteworthy that CLECs are lightly regulated and intermodal competitors are generally subject to even less regulation. Since these competitors are under no obligation to report customer in-service data,' especially at the MSA level, precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics, and Qwest has purchased such research to gain insights into market trends. For example, TNS Telecoms, an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends. In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state' and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market.' In calculating

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[6] VolP services are now offered on a "stand-alone" basis by provider such as Vonage, SunRocket, Packets. etc., as well as on an "integrated basis by Cable MSOs such as Comcast, Millennium Communications, Charter Communications, etc.

[7] The regulatory status of local telephone service provided by VolP technology is the subject of an open FCC proceeding (IP-Enabled Services, WC Docket **No. 04-36,** Notice of Proposed Rulemaking, 19 FCC Rcd **4863).** Currently, telecom providers are not required by FCC instructions for Form 411, which is the reporting tool used by telecom providers to report in-service access line counts to the FCC, to report VoIP-based access lines. If the FCC rules in its pending IP services proceeding that VoIP service is a telecommunications service, providers of these services may he required to report in the future access lines served via VolP. However. until that time, providers utilizing VolP to provide service are not required to report in-service data to the FCC.

[8] In Qwest's 14 state territory, the TNS research sample is drawn strictly from exchanges within the Qwest service area footprint and does not include data from Independent service territory.

[9] TNS Telecoms does not conduct a "connections share" analysis for the business market. and instead produces a "share of total telecom spend" analysis for the business segment.

”connections shares,” TNS defines a “connection” as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband internet line used by a customer would each be counted as a discrete “connection” under TNS’ definition in its calculations of “connections shares.” For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three “connections,” and Qwest’s “connections share” in this example would be 66%. In fourth Quarter 2000, TNS reported Qwest’s share of residential communications connections in the Seattle MSA at [redacted]. By fourth Quarter 2006, Qwest’s share of residential communications connections in the Seattle MSA had declined to [redacted].[10] Clearly, this data confirms that an increasing number of Seattle-area consumers are utilizing non-Qwest telecom alternatives to satisfy their telecommunications needs.

7. In the Business markets, developing precise measurements of “share” is equally difficult, in view of the diverse scope of intramodal and intermodal competition that now exists in the Seattle MSA and the general lack of availability of customer in-service data for these competitors. However, TNS Telecoms also conducts primary research in the small business and enterprise business segments and has assembled “revenue share” estimates for those markets that indicate competitive trends.” TNS classifies businesses generating less than $1,500 in monthly telecom spending as “mass market” business customers, and businesses spending at or above this level as “enterprise” business

[10] Source: TNS Telecoms, February 2007.

[11] TNS Telecoms **does not** collect connections share data in the business market.